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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 06 160 50386 Office: VERMONT SERVICE CENTER Date: MAR 03 2008

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner provides radio frequency identification training (RFID) and seeks to employ the beneficiary as an international market specialist. It endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information contending that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s requests for additional evidence; (3) the petitioner’s responses to the director’s requests; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an international market specialist. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s responses to the director’s requests for evidence. According to this evidence the beneficiary would:

- Research economic trends and their potential effect on the short and long term marketing decisions of the petitioner;
- Research marketing conditions in international locations (primarily Europe and the Middle East) in which the petitioner operates to determine the potential promotional success of training products and services;
- Develop research methods to gather data on competitors, pricing and prevailing conditions;
- Measure the effectiveness of international marketing, advertising, and communications campaigns and strategies, analyzing the results, and preparing reports to company management on findings;
- Set-up and manage distribution in international areas that feed overseas locations, and promote and increase overall international sales;

- Monitor industry statistics and follow trends in trade literature, as well as develop and maintain a working knowledge of client businesses, industries, and needs; and
- Prepare monthly sales forecast reports and ensure that the petitioner's reputation is maintained throughout the international community in which it is promoting its services.

The petitioner requires a minimum of a bachelor's degree in public relations, marketing, international trade or a related field for entry into the proffered position.

To determine whether the duties described are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As the petitioner has characterized its position as that of a market research analyst, the AAO first turns to the *Handbook's* description of market and survey researchers, the occupational title that is most closely related to the proffered position. The *Handbook*, 2006 – 07 edition, at page 175, describes the occupation of market or marketing research analysts as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though somewhat vaguely described, are varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers, as well as some additional management responsibilities. The duties described are not those typically performed by market research analysts as stated by the petitioner. While this position requires some market research, it is not a market research analyst position performing pure market research to be used in making corporate business decisions. The market research to be performed is the type normally performed by marketing managers and similar personnel in establishing marketing/promotional, advertising and sales

campaigns. The beneficiary would use the research in implementing marketing, sales and promotional campaigns.

The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner states that the beneficiary would spend 25% of her time setting-up and managing distribution of its products outside of North America, and promoting and increasing international sales. Setting-up and managing distribution of products are not duties normally performed by market research analysts. They are duties normally performed by management personnel in the petitioner's business environment. The *Handbook* further notes that the formal education and experience of general/operations managers, and other management personnel, varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into these management positions. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to the management/operational responsibilities of the position.

The petitioner has, however, established that the duties of the proffered position, in the petitioner's business environment, are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific educational discipline. The marketing, sales, public relations, and management functions to be performed by the beneficiary not only take place in the United States, but on an international basis as well.<sup>1</sup> The record establishes that the beneficiary must understand business environments of the different countries in which the petitioner hopes to sell its products,

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<sup>1</sup> The petitioner states, and its website verifies, that the petitioner is marketing and delivering its products and services in multiple international locations. The beneficiary will spend 25% of her time managing promotion and distribution of products and services in diverse countries/markets.

and have knowledge of international laws pertaining to the distribution of products and services marketed in foreign countries. Performance of the duties detailed by the petitioner in the context of this particular record of proceeding, which is well documented, makes the duties of the offered position more specialized and complex than those normally performed by advertising, marketing, promotions, public relations, sales manager, and operations manager positions. The ability to perform the duties of the proffered position, as defined by the current record of proceeding, would normally be associated with a baccalaureate or higher degree in a specific educational discipline. The petitioner has established the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(4), and the position qualifies as a specialty occupation.

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The beneficiary's foreign education has been determined by a credentials evaluation service to be equivalent to a master's degree in public relations from an accredited college or university in the United States. That degree is closely related to the duties of the proffered position, and the beneficiary is qualified to perform the duties of that position. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The petitioner has established that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation. The director's decision shall, accordingly be withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.